

WILLIAM K. HARRINGTON
United States Trustee, Region 2
U.S. Department of Justice
Office of the United States Trustee
One Bowling Green, Room 534
New York, New York 10004
Telephone: (212) 510-0500
By: Annie Wells, Trial Attorney
Daniel Rudewicz, Trial Attorney

Hearing Date: August 11, 2026
Hearing Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

S.M.F. GROUP INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 26-11893 (SAB)

(Joint Administration Requested)

**OBJECTION OF THE UNITED STATES TRUSTEE TO MOTION OF THE DEBTORS
FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS
TO (A) OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING
AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING
CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III)
GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTY,
(IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING,
AND (VI) GRANTING RELATED RELIEF**

¹ The Debtors and the last four digits of their federal tax identification numbers are: (1) S.M.F. Group Inc. (1726); (2) 57th Street Hospitality Partners, LLC (2026); (3) Brasserie 57 LLC (6251); (4) Broadway Hospitality Venture, LLC (5541); (5) Brooklyn Diner USA, Inc. (1194); (6) Brooklyn Diner USA, L.P. (9292); (7) Cafe Concepts (Washington DC), LLC (3827); (8) Ciel Partners, L.P. (7771); (9) Ebbets Field Venture, LLC (9637); (10) Ebbets Field Venture II, LLC (2344); (11) Fireman Hospitality Card LLC (4763); (12) Fiorello's Roman Cafe, Inc. (2519); (13) Italian Cafe Concepts, LLC (3784); (14) Red Eye/Brooklyn Associates, L.P. (9293); (15) Red Eye Grill, Inc. (1189); (16) Red Eye Grill, L.P. (9291); (17) SFAP Group, LLC (9152); (18) Shelny, LLC (1859); (19) SMJ Group, Inc. (1191); (20) SMJ Group, L.L.C. (3319); (21) The Finer Diner, LLC (1940); and (22) The Fireman Group Cafe Concepts, Inc. (5919). The Debtors' mailing address is 810 Seventh Avenue, Suite 615, New York, NY 10019.

William K. Harrington, United States Trustee for Region 2 (the “United States Trustee”), through his counsel, respectfully submits this objection (the “Objection”) to the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Party, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [ECF No. 19] (the “Motion”).² In support thereof, the United States Trustee respectfully states:

PRELIMINARY STATEMENT

The United States Trustee objects to the Debtors’ requested relief in the Motion for three reasons. **First**, the DIP Lender is an insider, and the Debtors have not provided a sufficient factual record establishing that the entire-fairness standard has been met. The Debtors have the burden to establish an appropriate factual record supporting the relief requested. **Second**, the Debtors have not demonstrated that they were unable to obtain less onerous credit as required by section 364(c). **Third**, the Interim Roll-Up DIP Loans are not subject to unwinding as required by Local Rule 4001-2(g)(5).

BACKGROUND

1. On August 9, 2026 (the “Petition Date”), the Debtors commenced these cases by filing voluntary petitions under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”).³ See Petition [ECF No. 1].

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

³ Unless otherwise stated herein, all section references are to the Bankruptcy Code.

2. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On August 10, 2026, the Debtors filed the Motion and the *Declaration of Jordan Meyers in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* [ECF No. 18] (the “Declaration”).

ARGUMENT

The United States Trustee objects to the Debtors’ requested relief in the Motion because (i) the Debtors have not met their burden showing the entire-fairness standard has been met; (ii) the requirements of section 364(c) have not been met; and (iii) the Interim Roll-Up DIP Loans must be subject to unwinding as required by Local Rule 4001-2(g).

I. The Debtors Have Not Met Their Burden Showing that the Entire-Fairness Standard has Been Met .⁴

Here, the DIP Lender—FHGRF LLC—is an affiliate of an insider. The Debtors’ CEO, Benjamin Grossman, owns 38.5% of the DIP Lender and, in addition, “the members of FHGRF are current minority and non-controlling investors in certain of the Debtors’ restaurants or members or friends of the Fireman family.” *See* Declaration at ¶ 16; 11 U.S.C. § 101(31) (defining the term “insider” to include directors, officers, and any person in control); 11 U.S.C. § 101(2) (defining the term “affiliate” to include any “entity that directly or indirectly owns,

⁴ The United States Trustee understands that the Debtors may be providing further support at or prior to the first-day hearing regarding the Motion. To the extent the Debtors do not make such record, the United States Trustee objects to entry of Order for the reasons set forth in this section.

controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor . . .” subject to certain exceptions).

Where there is a transaction with an insider, “courts evaluate ‘the integrity and entire fairness of the transaction at issue, typically examining whether the process and price of a proposed transaction not only appear fair but are fair and whether fiduciary duties were properly taken into consideration.’” *In re BSG Corp.*, 2026 Bankr. LEXIS 898, at *10 (Bankr. S.D.N.Y. Apr. 9, 2026) (quoting *In re Innkeepers USA Trust*, 442 B.R. 227, 231 (Bankr. S.D.N.Y. 2010)).

“In assessing procedural fairness, courts examine when the transaction was timed, how it was initiated, structured, negotiated, disclosed to the directors, and how the approvals of the directors were obtained.” *Id.* (quoting *In re SPAC Recovery Co.*, 676 B.R. 260, 274 (Bankr. S.D.N.Y. 2026) (citing *In re Transcare Corp.*, 2020 Bankr. LEXIS 3782, 2020 WL 8021060, at *19 (Bankr. S.D.N.Y. July 6, 2020)))(internal quotations omitted). Here, the Declaration states that “Mr. Grossman recused himself from the negotiation and approval of the DIP Facility on behalf of the Debtors.” Declaration at ¶ 35. However, the DIP Agreement only lists Mr. Grossman as the authorized signatory for the Debtors. *See* Signature Page to DIP Credit Agreement. Otherwise, the Declaration provides nothing more than conclusionary statements that the process was fair.

Moreover, there is a lack of evidence that the terms of the DIP Loan are fair. The Debtors are giving the insider DIP Lender a 2:1 roll-up of prepetition loans on the first day of the case. The DIP Loan provides the insider DIP Lender with a secured claim on, among other things, all unencumbered value of the Debtors. This combination multiplies the size of insider claims and removes valuable sources of assets for unsecured creditors.

II. The Requirements of Section 364(c) Have Not Been Met

Section 364(c) allows a debtor to obtain secured financing only after showing that unsecured administrative-expense financing was unavailable. *See* 11 U.S.C. § 364(c) (noting that the court may authorize secured financing “[i]f the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, . . .”).

While courts vary on the number of potential lenders that must be contacted, contacting only one institution is insufficient to meet the burden required by section 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 550 (Bankr. E.D. Pa. 1987) (“[W]e are not convinced that the Debtors have made the requisite exhaustive unsuccessful efforts to obtain credit on terms in accordance with § 364(b). Only one lending institution was approached.”).

Here, the Debtors’ declarant states:

On behalf of the Debtors, I reached out to BankUnited to explore its interest in providing postpetition financing to the Debtors but it was not willing to do so. Given the Debtors’ financial and operational circumstances, it is my opinion that third party lenders would not be willing to fund into the Debtors’ situation on a junior basis and that further outreach would not have been productive. Ultimately, the proposal from FHGRF was the only available option.

Declaration at ¶ 29. Like the debtors in *Crouse*, the Debtors here have not made the requisite exhaustive unsuccessful efforts to obtain unsecured administrative-expense credit.

III. The Interim Roll-Up DIP Loans Must be Subject to Unwinding as Required by Local Rule 4001-2(g)(5).

Local Rule 4001-2(g)(5) requires that “a proposed order approving . . . a rollup shall include language that reserves the right of the Court to unwind or partially unwind, after notice and hearing, the postpetition protection provided to the prepetition lender or the pay down of the

prepetition debt, whichever is applicable, in the event that there is a timely and successful challenge” While the Motion was filed late last night, upon a cursory review of the proposed Order, it does not appear that the Interim Roll-Up DIP Loans can be unwound.

[Remainder of page intentionally left blank.]

CONCLUSION

For the reasons set forth in this Objection, the United States Trustee respectfully requests that the Court deny the Motion and grant other relief as is just and proper.

Dated: New York, New York
August 11, 2026

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE

By: /s/ Daniel Rudewicz
Annie Wells
Daniel Rudewicz
Trial Attorneys
Office of the United States Trustee
One Bowling Green, Room 534
New York, New York 10004
Telephone: (212) 510-0500